

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

**In re: SUBPOENA FOR INSPECTION
AND SAMPLING OF PREMISES
OWNED BY NON-PARTIES IN THE
MATTER OF:**

**STATE OF OKLAHOMA, et al.,
Plaintiffs**

vs.

**TYSON FOODS, INC., et al.,
Defendants.**

Case No. 4:05-CV-00329-TCK-SAJ

**CERTAIN NON-PARTY POULTRY GROWERS'
REPLY TO STATE'S RESPONSE IN OPPOSITION TO
DEFENDANTS' PROPOSED PROTECTIVE ORDER**

At the hearing on, *inter alia*, various motions to quash held before the Honorable Magistrate Judge Joyner on May 17, 2006, counsel for Tyson furnished to the Court, by way of example, a draft proposed protective order. That draft was not "filed" with the Court. Because the draft was not filed, these Poultry Growers¹ responded to the Court's invitation to comment upon the draft by letter, with a copy to all counsel. The Plaintiff, however, decided to file a formal Response to that draft protective order. By elevating this issue, Plaintiff has forced these non-parties to file a formal Reply to the State's Response.

These non-party Poultry Growers believe the May 17 hearing amply demonstrated why this Court should grant their Motion to Quash: the Plaintiff utterly failed to provide any

¹ These non-parties are: Bill R. Anderson; Steve Butler, allegedly d/b/a Green Country Farms; Ren Butler and Georgia Butler; Julie Anderson Chancellor; Roger D. Collins; Franklin A. Glenn and Kenneth D. Glenn and Sondra D. Glenn; Juana Loftin; Larry McGarrah and Priscilla McGarrah; Jim L. Pigeon and Michele R. Pigeon; Joel J. Reed and Rhonda Reed and Caleb Reed and Cory Reed; W. A. Saunders and Bev Saunders; Robert V. Schwabe, II; and David R. Wofford and Robin L. Wofford.

evidence (other than its own rhetoric) to refute Bert Smith's testimony that the Plaintiff is engaged in a pseudo-science experiment, which will not lead to any admissible evidence; the Plaintiff did not provide any specifics for two of its proposed sampling regimens,² which specifics are required by the Federal Rules of Civil Procedure; the Plaintiff denied these Poultry Growers' legitimate right to compensation for the Plaintiff State's proposed taking of their property; and the Plaintiff made it clear it intends to interrogate these non-parties without affording them due process of law. Accordingly, these non-parties' Motion to Quash should be granted.

However, should this Court decide that Plaintiff may perform some of the sampling it requests after the Plaintiff has complied with all applicable laws, rules and regulations of the State of Oklahoma, the Plaintiff's Response itself demonstrates why a protective order is needed: **the Plaintiff's Response fails to address at all the rights and legitimate concerns of these non-party Poultry Growers.**

The Plaintiff blithely posits that no protective order is necessary, relying upon its own self-serving chart titled "Comparison of Parties Biosecurity Protocol Sampling Requirements." These non-party Poultry Growers had no input into whatever negotiations there were between the parties. It is not surprising, therefore, that Plaintiff's chart neither addresses the landowners, who will be the actual recipients of Plaintiff's invasion, nor provides them with any protection.

These non-party Poultry Growers incorporate herein by reference the entirety of their May 19, 2006 letter to Magistrate Judge Joyner. These non-party Poultry Growers respectfully suggest that the Plaintiff's cavalier attitude as manifested in its Response requires that these non-parties be issued a protective order incorporating the protections as set forth in their letter. This

² The geoprobe groundwater sampling and the edge of field rainfall runoff sampling.

Court should make it clear to the Plaintiff State of Oklahoma that there are limits to what it can do to its citizen and their property.

CONCLUSION

For the reasons set forth above and in all their papers filed in this case, should this Court grant any portion of the Plaintiff's Motion to Compel, then this Court should issue a protective order containing the protections set forth in these non-parties' May 19, 2006 letter to Magistrate Judge Joyner.

Respectfully submitted,

s/ Michael D. Graves

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ATTORNEYS FOR POULTRY GROWERS

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May, 2006, a copy of the above and foregoing was sent via facsimile to the following counsel of record:

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and that an electronic version of the same was sent this date to the following:

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